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United States

Circuit Court of Appeals

For the Ninth Circuit.

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MAH SHEE, by CHAN LEUNG,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration
at the Port of San Francisco, California,
Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed *literally* in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the Southern Division of the District Court of the
United States, Northern District of California,
First Division.*

No. 16,118.

In the Matter of MAR SHEE, on Habeas Corpus.

Names and Addresses of Attorneys.

For the Detained and Appellant: GEO. A. McGOWAN, Esq., San Francisco.

For the Respondent and Appellee: U. S. ATTORNEY, San Francisco, Cal.

*District Court of the United States, in and for the
Northern District of California, Southern Division,
First Division.*

No. 16,118.

In the Matter of the Application of MAH SHEE,
on Habeas Corpus.

(Praeceptum for Transcript on Appeal.)

To the Clerk of Said Court:

Sir: Please make up Transcript of Appeal in the above-entitled case, to be composed of the following papers, to wit:

1. Petition for Writ of Habeas Corpus.
2. Order to Show Cause.
3. Demurrer to Petition.
4. Minute Order Regarding Immigration Record.
5. Judgment and Order Dismissing Order to Show Cause and Denying Petition for Writ.
6. Notice of Appeal.
7. Petition for Appeal.

8. Assignment of Errors.
9. Order Allowing Appeal.
10. Citations on Appeal—Original and Copy.
11. Order Extending Time to Docket Case.
12. Stipulation and Order Regarding Immigration Record.
13. Pages 59 to 61, inclusive, from Immigration Record.
14. Clerk's Certificate.

GEO. A. MCGOWAN,
Attorney for Petitioner.

Due service and receipt of a copy of the within praecipe is hereby admitted this 15th day of January, 1917.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

[Endorsed]: Filed Jan. 15, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

*In the District Court of the United States, in and
for the Northern District of California, South-
ern Division, First Division.*

No. 16,118.

In the Matter of the Application of MAH SHEE,
on Habeas Corpus.

*Page-number appearing at foot of page of original certified Transcript of Record.

Petition for Writ.

To the Honorable MAURICE T. DOOLING,
United States District Judge, in and for the
Northern District of California, First Division:

It is respectfully shown by the petition of Chan Leung—

That Mah Shee, hereinafter in this petition referred to as the “detained,” is unlawfully imprisoned, detained, confined and restrained of *his* liberty by Edward White, Commissioner of Immigration for the Port of San Francisco at the Immigration Station at Angel Island, County of Marin, State and Northern District of California, Southern Division thereof; that said imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consists in this, to wit:

That it is claimed by the said Commissioner that the said detained is a Chinese person and an alien not subject or entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 6th, 1882, July 5th, 1884, November 3d, 1893, and the Act of Congress of April 29th, 1902, as amended and re-enacted by Section 5 of the Deficiency Act of April 7th, 1904, which said acts are commonly known and referred to as the Chinese Exclusion or Restriction Acts; and that he, the said Commissioner, intends to deport the said detained away from and out of the United States to the Republic of China. [2]

That the said Commissioner claims that the said detained arrived at the Port of San Francisco on or

about the 16th day of August, 1916, on the steamship "Tenyo Maru" and thereupon made application to enter into the United States as the wife of a native born citizen thereof, that is to say, as the wife of your petitioner, who is a native-born citizen of the United States and who accompanied his wife, the said detained, from China to the Port of San Francisco upon the said steamship, and that your petitioner was thereupon permitted to re-enter the United States as a native-born citizen thereof; and that the application of the said detained to enter the United States as such wife of a native-born citizen thereof was denied by the said Commissioner of Immigration, and that appeal was thereupon taken from the excluding decision of the said Commissioner of Immigration to the (Secretary of the Department of Labor) and that the said Secretary thereafter dismissed the said appeal. That it is admitted that the said detained was admissible to the United States under the General Immigration laws thereof, and that she is a Chinese family woman of respectability. That it is claimed by the said Commissioner that the said detained was accorded a full and fair hearing; that the action of the said Commissioner and said Secretary was taken and made by them in the proper exercise of the discretion committed to them by the statutes in such cases made and provided and in accordance with the regulations promulgated under the authority contained in said statutes.

But, on the contrary, your petitioner, on his information and belief alleges that the hearing and pro-

ceedings had herein and the action of the said Commissioner and the action of the said Secretary was and is in excess of the authority committed to them by said rules and regulations and by said statutes and that the denial of the application of the said detained to enter into the United States as the wife of a native-born citizen thereof, was and is an abuse of [3] the authority committed to them by the said statutes in each of the following particulars hereinafter set forth:

First. That the evidence submitted upon the application of the said detained to enter the United States was of such a conclusive kind and character, and was of such legal weight and sufficiency that it was an abuse of discretion upon the part of the said Commissioner and the said Secretary not to be guided thereby and it was further an abuse of discretion as aforesaid upon the part of the said officers to refuse to accept the said testimony and the report and recommendation of the Examining Immigration Inspector before whom alone appeared the applicant and your petitioner in said case, and before whom the applicant and your petitioner gave their testimony herein. That the said Immigration Inspector was directed to hear the said case by orders of the said Commissioner, and the said detained and your petitioner having appeared before the said Inspector, and the said Inspector having heard the said detained and your petitioner and taken their testimony by question and answer, and having the opportunity of observing their manner and conduct, while under examination, and having

seen and observed the same, and having reported herein that the demeanor of the said witnesses was satisfactory, and that none of them were discredited before the Immigration Service, and having found from all the evidence so taken by him as aforesaid that the said detained was entitled to admission into the United States as the wife of a native-born citizen thereof, that it was an abuse of discretion for the said Commissioner, who did not have the said detained or your petitioner before him, and had not the opportunities for judging of their credibility, as had the Inspector, to set aside the report and recommendation of the said Inspector and deny the application [4] of the said detained to enter the United States, and it was further an abuse of discretion for the reasons aforesaid for the said Secretary of Labor to affirm the said excluding decision of the said Commissioner, and to refuse to be guided by the report and recommendation of the said Inspector before whom alone, of said officers, the applicant and your petitioner appeared and gave their testimony, and your petitioner therefore alleges, upon his information and belief, that the said detained is so illegally restrained of her liberty for the reason aforesaid, and the said adverse action of the said Commissioner, and the said Secretary, was, your petitioner alleges upon his information and belief, arrived at and done in denying the said detained the fair hearing and consideration of her case to which she was entitled, and your petitioner further alleges upon his information and belief that the action of the said Commissioner and the said Sec-

retary of Labor, in thus disregarding the said evidence, was done in excess of the discretion committed to them by the acts hereinbefore mentioned, and in violation of the constitutional rights of the said detained as the wife of a native-born citizen of the United States, and your petitioner further alleges upon his information and belief that had the same testimony as was presented herein upon behalf of the said detained, been presented upon behalf of a person of any other race than the Chinese, that the said evidence would not have been so disregarded, and disrated, and your petitioner further alleges, therefore, that the action of the said Secretary of Labor was influenced against the said detained and her said witnesses solely because of their being of the Chinese race, and in disregard of the fact that the husband of the detained is conceded to be a citizen of the United States by the said Commissioner of Immigration and the [5] said Secretary of Labor, and your petitioner therefore alleges that the discrimination mentioned was both unjust and illegal.

Second. That the hearing accorded said detained before the said Commissioner and the said Secretary was not a full or a fair hearing, but on the contrary the right of the said detained to be represented by counsel was unduly infringed upon in such a way and manner as to prevent the said detained from presenting all of the evidence possible of submission upon her behalf before the said Commissioner and the said Secretary, and in this particular your petitioner alleges that upon the denial of the case of the said detained by the said Commissioner that the said

detained, through her attorney, filed a written request with the said Commissioner, which said written request was dated September 18, 1916, requesting that the report and recommendation of the Examining Inspector and of the reviewing officer of the Law Section be opened to the inspection of the attorney for the said detained, so that the said detained, through her attorney, might make answer thereto by evidence or argument before the said Commissioner and the said Secretary of the Department at a time when it would be in the power of the said detained to submit additional evidence in support of her said appeal, and that said report or review of the Examining Inspector and the law officer were open to the inspection of the attorneys practicing before the Department at Washington, your petitioner contending that these reports should be open to the inspection of your petitioner and the detained and their attorney at a time when he could make answer thereto by evidence or argument as may be deemed necessary, but that the said Commissioner of Immigration did in a written communication, under date of September 19th, 1916, deny said request, and by virtue of the said denial prevented the said detained from submitting evidence on her behalf showing her [6] right to enter the United States, and thus prevented her having a full and fair hearing of her said application to enter the United States.

Your petitioner further alleges that upon the 20th day of September, 1916, the said detained and your petitioner, through their attorney, caused to be filed a written application to the said Secretary request-

ing that the said attorney be permitted an interview with his client, the detained in this matter, that her said husband, with whom she had journeyed from China to this country, so that the said detained might have an opportunity of submitting additional evidence on behalf of her application to enter the United States, but that the said application was denied by the said Commissioner in a written communication dated September 25th, 1916, wherein the right of counsel of the said detained was unduly curtailed and so limited in its application as to prevent and deprive the said detained of any real substantial benefit of counsel, and in this particular your petitioner alleges that the said detained does not speak the English language, and that it was necessary for the said attorney to have an interpreter in order to confer with the said detained, and that your petitioner, as husband of the said detained, would have acted in that capacity, and the action of the Commissioner in preventing and depriving the said detained of the right to confer with her counsel, and to prevent and deprive her of any knowledge as to why her case had been denied, and thus preventing her a fair opportunity of submitting additional evidence upon behalf of her appeal, was an unjust discrimination that deprives said detained of her liberty without due process of law.

Your petitioner further alleges that upon the 27th day of September, 1916, he caused a written request to be filed with the said Commissioner asking permission that the said detained, who [7] journeyed from China to the port of San Francisco with

your petitioner, her husband, be allowed to be visited by your petitioner, so that he might be permitted to see, talk to, confer with and console and comfort his wife, the said detained, but that the said Commissioner denied said request, and your petitioner alleges that ever since the arrival of his wife, the said detained, at the port of San Francisco, up and to the present time, she has been kept in close detention and custody by the said Commissioner, and held *incommunicado*, not knowing and not being informed as to why her application to enter the United States had been denied, thus preventing any and all opportunity of submitting evidence upon her own behalf in support of her said appeal in her endeavor to gain admission to the United States as the wife of your petitioner. That your petitioner has in his possession a copy of all the testimony given in said matter, together with a copy of the letters addressed to the Commissioner, herebefore referred to, and the original of the answers from the Commissioner, herebefore referred to, and that all of said papers, documents and testimony which are in the possession of your petitioner are submitted herewith under a separate cover, and are hereby referred to with the same force and effect as has been set forth herein. That your petitioner has not a copy of the proceedings of the said case which took place before the said Secretary of Labor at Washington, and that there is no copy of said proceedings now within the jurisdiction of this Court, and it is therefore impossible for your petitioner to procure a copy thereof to submit with this petition in time to prevent the deportation here-

inbefore and hereafter referred to.

That it is the intention of the said Commissioner to deport the said detained away from and out of the United States by the steamer "Nippon Maru," sailing from the port of San Francisco upon [8] the 25th day of November, 1916, at one o'clock P. M. and unless this Court intervenes and stays said deportation, the said detained will be deprived of her right to enter the United States and join her husband, your petitioner, and take up her residence with her husband within the United States.

That your petitioner verifies this petition for and upon behalf of his wife, the said detained, and upon his own behalf as the husband of the said detained, for the reason that the said detained is held *incommunicado*, in close custody and confinement, and has been deprived of the right to see and consult her attorney, and see or be seen by her husband, and hence is unable to verify said petition upon her own behalf.

WHEREFORE, your petitioner prays that a writ of *habeas corpus* may be issued herein, directed to the said Commissioner of Immigration, directing him to produce the body of the said detained, together with the time and cause of her detention before this Honorable Court at a time and place to be specified in said order, together with such further and other relief as to the Court may seem proper in the premises, and that the said detained may be restored to her liberty and permitted to take up her domicile in the United States as the wife of your

petitioner, and that she go hence without day.

CHAN (Chinese Characters) LEUNG,
Petitioner.

GEO. A. McGOWAN,
Attorney for Petitioner, Bank of Italy Building,
San Francisco, California. [9]

UNITED STATES OF AMERICA.

State and Northern District of California,
City and County of San Francisco,—ss.

Chan Leung, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing petition; that the same has been read and explained to him and he knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

CHAN (Chinese Characters) LEUNG.

Subscribed and sworn to before me this 24 day of
November, 1916.

[Seal] THOMAS S. BURNES,
Notary Public in and for the City and County of San
Francisco, State of California.

(CHINESE PICTURE.)

Photograph of Petitioner.

Due service and receipt of a copy of the within
Petition and Order is hereby admitted this 24 day
of Nov., 1916.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

[Endorsed]: Filed Nov. 24, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [10]

*In the District Court of the United States, in and for
the Northern District of California, Southern
Division, First Division.*

No. 16,118.

In the Matter of the Application of MAH SHEE on
Habeas Corpus.

Order to Show Cause.

Good cause appearing therefor and upon reading the verified petition on file herein, it is hereby ordered that Edward White, Commissioner of Immigration for the Port and District of San Francisco, appear before this Court on the 29 day of November, 1916, at the hour of 10 o'clock, A. M. of said day, to show cause, if any he has, why a writ of *habeas corpus* should not be issued as prayed for; and that a copy of this order be served upon the said Commissioner, and a copy of said petition upon the United States Attorney.

AND IT IS FURTHER ORDERED that the said Edward White, Commissioner of Immigration, as aforesaid, or whoever, acting under the orders of said Commissioner, or the Secretary of Labor, shall have the custody of the said Mah Shee, are hereby ordered and directed to retain the said person within the custody of the said Commissioner of Immigration and within the jurisdiction of this Court until its further order herein.

Dated San Francisco, California, November 24, 1916.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed Nov. 24, 1916. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [11]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 9th day of December, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable MAURICE T. DOOLING, District Judge, et al.

No. 16,118.

In the Matter of MAH SHEE, on Habeas Corpus.

(Minutes of Hearing on Order to Show Cause.)

This matter came on regularly this day for hearing on the order to show cause as to the issuance of a writ of *habeas corpus* herein. Geo. A. McGowan, Esq., was present as Attorney for the petitioner and detained. C. A. Ornbaun, Esq., Assistant United States Attorney, was present on behalf of respondent and presented and filed Demurrer to the petition for writ of *habeas corpus* and by consent of attorney for detained, the Court ordered that the Immigration Records, likewise presented, be filed and marked as Respondent's Exhibit "A" and "B" and that the same be considered as a part of the said original peti-

tion. Said matter was then argued by counsel for respective parties and submitted. [12]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 16,118.

In the Matter of the Application of MAH SHEE on Habeas Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Now comes the respondent, Edward White, Commissioner of Immigration at the Port of San Francisco, in the State and Northern District of California, and demurs to the petition for a writ of *habeas corpus* in the above-entitled cause and for grounds of demurrer alleges

I.

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of *habeas corpus*, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of *habeas corpus* be denied.

JOHN W. PRESTON,
United States Attorney,
CASPER A. ORNBAUN,
Asst. United States Attorney,
Attys. for Respondent.

Copy received. Dec. 9, 1916.

GEO. A. McGOWAN,

Atty. for Pet.

[Endorsed]: Filed Dec. 9th, 1916. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy. [13]

*In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia, First Division.*

No. 16,118.

In the Matter of MAH SHEE, on Habeas Corpus.

**(Order Sustaining Demurrer to Petition for a Writ
of Habeas Corpus and Denying Petition for
Writ.)**

GEORGE A. McGOWAN, Esq., Attorney for
Petitioner.

JOHN W. PRESTON, Esq., United States At-
torney and CASPER A. ORNBAUN, Esq.,
Assistant United States Attorney, Attor-
neys for Respondent.

**ON DEMURRER TO PETITION FOR A WRIT
OF HABEAS CORPUS.**

The demurrer to the petition for a writ of *habeas
corpus* herein is sustained, and said petition denied.

December 15th, 1916.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Dec. 15, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [14]

*In the District Court of the United States, in and for
the Northern District of California, Southern
Division, First Division.*

No. 16,118.

In the Matter of the Application of MAH SHEE on
Habeas Corpus.

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to the
Hon. JOHN W. PRESTON, United States At-
torney for the Northern District of California:

You and each of you will please take notice that
Mah Shee, the detained herein, by Chan Leung, the
petitioner herein, do hereby appeal to the Circuit
Court of Appeals of the United States for the Ninth
Circuit from the order made and entered herein on
the 15th day of December, 1916, sustaining the de-
murrer and denying the petition for a writ of habeas
corpus filed herein.

Dated San Francisco, California, December 19th,
1916.

GEO. A. McGOWAN,
Attorney for Petitioner, Detained and Appellants
herein.

Due notice and receipt of a copy of the within
Notice of Appeal is hereby admitted this 20 day of
Dec., 1916.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

[Endorsed]: Filed Dec. 21, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

In the District Court of the United States, in and for the Northern District of California, Southern Division, First Division.

No. 16,118.

In the Matter of the Application of MAH SHEE, on Habeas Corpus.

Petition for Appeal.

Comes now Mah Shee, the detained, by Chan Leung, the petitioner, who are the appellants herein, and say:

That on the 15th day of December, 1916, the above-entitled Court made and entered its order denying the petition for a writ of *habeas corpus* as prayed for and filed herein, in which said order certain errors are made to the prejudice of the appellants herein, all of which will more fully appear from the assignment of errors filed herein;

WHEREFORE these appellants pray that an appeal may be granted in their behalf to the Circuit Court of Appeals of the United States for the Ninth District for the correction of the errors so complained of, and further that a transcript of the record, proceedings and papers in the above-entitled cause as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit. It is further prayed that during the pendency of the said appeal the said Mah Shee may be granted

her liberty and remain at large upon a bond in the sum of \$1,000, conditioned that she remains within the United States and renders herself in execution of whatever judgment is finally entered herein.

Dated San Francisco, California, December 19th, 1916.

GEO. A. MCGOWAN,
Attorney for Petitioners, Detained and Appellants
Herein. [16]

Due service and receipt of a copy of the within Petition for Appeal is hereby admitted this 20 day of Dec. 1916.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

[Endorsed]: Filed Dec. 21, 1916. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [17]

*In the District Court of the United States, in and for
the Northern District of California, Southern
Division, Division No. 1.*

No. 16,118.

In the Matter of MAH SHEE, on Habeas Corpus.

Assignment of Errors.

Comes now Mah Shee, the detained herein, by Chan Leung, petitioner herein, both of whom are appellants herein, by their attorney, George A. McGowan, Esquire, in connection with their petition, for a hearing herein, assign the following errors which they aver occurred upon the trial or hearing

of the above-entitled cause, and upon which they will rely, upon appeal to the Circuit Court of Appeals for the Ninth Circuit, to wit:

First. That the Court erred in denying the petition for a writ of *habeas corpus* herein.

Second. That the Court erred in not holding that it had no jurisdiction to issue a writ of *habeas corpus*, as prayed for in the petition herein.

Third. That the Court erred in not holding that the allegations contained in the petition herein, for a writ of *habeas corpus*, were sufficient in law, to justify the granting and issuing of a writ of *habeas corpus*, as prayed for in the said petition.

Fourth. That the Court erred in holding that the immigration authorities had accorded the appellant, Mah Shee, a fair hearing in the matter of her application to enter the United States.

Fifth. That the Court erred in holding that it was not an abuse of discretion and did not prevent the appellant from having a fair hearing for the immigration authorities to refuse her the [18] right to be interviewed by her attorney for the purpose of submitting additional evidence upon appeal.

Sixth. That the Court erred in holding that it was not an abuse of discretion and did not prevent the appellant from having a fair hearing for the immigration authorities to refuse to permit her to have the right of a conference and consultation with her attorney after the denial of her case by the Commissioner of Immigration, and during the pendency of the said appeal before the Department of Labor.

Seventh. That the Court erred in holding that

it was not an abuse of discretion and did not prevent the appellant from having a fair hearing for the Commissioner of Immigration to withhold from the inspection of her attorney the report and review upon which the denial of the said Commissioner was based.

Eighth. That the Court erred in holding that it was not an abuse of discretion and did not deprive the appellant of a fair hearing for the Commissioner of Immigration and the Secretary of Labor to refuse to be guided by the report of the examining Immigration Inspector, who was the only officer who came in contact with the witnesses submitting evidence in said matter, and who was the only officer who had an opportunity of observing their conduct and demeanor while upon the witness-stand.

WHEREFORE, the appellants pray that the judgment and order of the United States District Court, in and for the Northern District of the State of California, made and entered herein in the office of the clerk of said court on the 15th day of December, 1916, discharging the order to show cause and dismissing the petition for a writ of *habeas corpus* be reversed and that this cause be remitted to the said lower court with instructions to discharge the said Mah Shee from custody, or grant her a new trial before the lower court, by directing the issuance of a writ of *habeas* [19] *corpus*, as prayed for in said petition.

Dated San Francisco, California, December 19th, 1916.

GEO. A. MCGOWAN,
Attorney for Appellants.

Due service and receipt of a copy of the within Assignment of Errors is hereby admitted this 20 day of Dec., 1916.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

[Endorsed]: Filed Dec. 21, 1916. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [20]

*In the District Court of the United States, in and
for the Northern District of California, South-
ern Division, Division No. 1.*

No. 16,118.

In the Matter of MAH SHEE on Habeas Corpus.

Order Allowing Petition for Appeal.

On this 20th day of December, 1916, comes Mah Shee, the detained herein, by Chan Leung, the petitioner herein, both of whom are appellants herein, by their attorney, George A. McGowan, Esquire, and having previously filed herein, did present to this Court their petition praying for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, intended to be urged and prosecuted by them, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper. And it appearing to the Court that the said detained having first applied

to the Immigration authorities for permission to enter the United States that the application for a writ of *habeas corpus* on her behalf was not in that sense an application in the first instance to enter the United States by the said detained, and the application of the said detained for a writ of *habeas corpus* having been seen, heard and determined by this Court that the application for appeal presented with the said petition for appeal is not an application to the Court for appeal in the first instance, and in consideration of the importance of the legal points involved in said appeal, the Court does—

IN CONSIDERATION WHEREOF, hereby allows the appeal herein [21] prayed for, and orders and directs that the order of deportation made and entered by the said Commissioner of Immigration and so affirmed by the said Secretary of Labor, and the order of remand made and entered herein be stayed, pending the hearing of the said case in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated San Francisco, California, December 21, 1916.

M. T. DOOLING,

United States District Judge.

Due service and receipt of a copy of the within order allowing appeal is hereby admitted this 21st day of December, 1916.

JNO. W. PRESTON,

U. S. Attorney, Northern District of California.

Attorney for Respondent.

[Endorsed]: Filed Dec. 21, 1916. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [22]

(Citation on Appeal—Copy.)

UNITED STATES OF AMERICA,—ss:

The President of the United States, to EDWARD WHITE, Commissioner of Immigration, Port of San Francisco and to JOHN W. PRESTON, Esq., the U. S. Attorney, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, Southern Division, Division No. 1, wherein Mah Shee and Chan Leung are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 20th day of December, A. D. 1916.

M. T. DOOLING,
United States District Judge.

Service of the within Citation on Appeal and receipt of a copy thereof is hereby admitted this 21st day of December, 1916.

JNO. W. PRESTON,
U. S. Attorney.

[Endorsed]: Filed Dec. 21, 1916. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [23]

(Extracts From Immigration Record.)

McGOWAN & WORLEY,
Attorneys and Counsellors at Law,
Bank of Italy Building.

S. E. Corner Montgomery and Clay Streets.

Rooms 302, 303 and 304.

Telephone Kearny 3092.

San Francisco, Sept. 20, 1916.

Hon. Edward White,

Commissioner of Immigration,
Port of San Francisco.

Dear Sir:—

In re MAH SHEE,
15502/7-13, ex. SS. "Tenyo Maru,"
August 16th, 1916.

This applicant has been detained at this port since the 16th of August. She has been held incommunicado by you, and has been permitted no communication with her husband, nor he with her since said time. Her case has been denied, and such proceedings as have been had with respect thereto are now a matter of record. We have just received your letter denying our application to have the review of

the Law Section open to our inspection.

We now request an interview with this applicant with her husband as a basis for the introduction of further evidence in support of her appeal.

Yours very respectfully,

McGOWAN & WORLEY,

By GEO. A. McGOWAN,

Attorneys for Applicant.

GAMCG/s.

Referred to Mr. Wilkinson.

W. T. B.

(Time Stamp) [24]

U. S. DEPARTMENT OF LABOR.

Immigration Service.

Office of the Commissioner

San Francisco, Cal.

15502/7-13

September 25, 1916.

Messrs. McGowan and Worley,

Attorneys-at-Law,

Bank of Italy Bldg., San Francisco.

Sirs:

Replying to your letter of the 20th instant, in re Mah Shee, wife of a native, ex. SS. "Tenyo Maru," August 16, 1916, you are advised that the request contained therein, that you, as counsel, and the applicant's alleged husband be permitted to interview the applicant as a basis for the introduction of further evidence in support of her appeal, must be denied, as there is no authority, in either the law or

regulations, for such a procedure.

Respectfully,

Exact copy as signed by W. T. BOYCE,

Acting Commissioner.

Mailed this day of K.

WHW/ASH. [25]

McGOWAN & WORLEY,

Attorneys and Counsellors at Law,

Bank of Italy Building.

S. E. Corner of Montgomery and Clay Streets.

Rooms 302, 303 and 304.

Telephone Kearny 3092.

San Francisco, Sept. 27, 1916.

Hon. Edward White,

Commissioner of Immigration,

Port of San Francisco.

(Time Stamp)

Dear Sir:—

In re MAH SHEE,

wife of native, 15520/7-13,

ex. SS. "Tenyo Maru," Aug. 16, 1916.

This applicant having been held incommunicado at your station since the 16th day of August, 1916, she having been kept separate, apart, and away from her husband during all of that time the husband now desires to request that he be permitted to see, talk to, comfort and console his wife, who journeyed with

him to this country on the same boat and to whom you have denied admission.

Yours very respectfully,

McGOWAN & WORLEY,

By GEO. A. McGOWAN,

GAMcG/s.

Attorneys for Applicant.

9/27/16.

Insp. Wilkinson has case.

9/27/16.

To Miss Wilson,

CDM. [26]

*District Court of the United States, in and for the
Northern District of California, Southern Division,
First Division.*

No. 16,118.

In the Matter of the Application of MAH SHEE, on
Habeas Corpus.

**Stipulation and Order Respecting Withdrawal of
Immigration Record.**

IT IS HEREBY STIPULATED and agreed by and between the attorney for the Petitioner and Appellant herein, and the attorney for the respondent and appellee herein, that the original immigration record in evidence and considered as part and parcel of the petition for a writ of habeas corpus upon hearing of the demurrer in the above-entitled matter, may be withdrawn from the files of the clerk of the above-entitled court and filed with the clerk of the United Circuit Court of Appeals in and for the Ninth

Circuit; there to be considered as a part and parcel of the record on appeal in the above-entitled case with the same force and effect as if embodied in the transcript of the record and so certified to by the Clerk of this Court.

Dated San Francisco, California, January 15, 1917.

GEO. A. McGOWAN,

Attorney for Petitioner and Appellant.

JNO. W. PRESTON,

United States Attorney for the Northern District of California,

Attorney for Respondent and Appellee. [27]

Order.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the said Immigration record therein referred to, may be withdrawn from the office of the clerk of this Court and filed in the office of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, said withdrawal to be made at the time the record on appeal herein is certified to by the clerk of this Court.

M. T. DOOLING,

United States District Judge.

Dated San Francisco, California, January 15th, 1917.

Due service and receipt of a copy of the within stipulation and order is hereby admitted this 15th day of January, 1917.

JNO. W. PRESTON,

U. S. Attorney, Northern District of California,

Attorney for Respondent.

[Endorsed]: Filed Jan. 15, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [28]

District Court of the United States, in and for the Northern District of California, Southern Division, First Division.

No. 16,118.

In the Matter of the Application of MAH SHEE, on Habeas Corpus.

(Order Extending Time to Docket Case.)

Good cause appearing therefor, and upon motion of George A. McGowan, Esquire, attorney for the appellant herein, it is hereby ordered that the time within which the record in the above-entitled cause may be docketed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended for a period of twenty (20) days from and after the date hereof.

Dated San Francisco, California, January 12th, 1917.

M. T. DOOLING,
United States District Judge.

Due service and receipt of a copy of the within is hereby admitted this 12 day of January, 1917.

JNO. W. PRESTON,
U. S. Attorney, Northern District of California,
Attorney for Respondent.

[Endorsed]: Filed Jan. 12, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [29]

*District Court of the United States, in and for the
Northern District of California, Southern Division,
First Division.*

No. 16,118.

In the Matter of the Application of MAH SHEE, on
Habeas Corpus.

(Order Extending Time to Docket Case.)

Good cause appearing therefor, and upon motion of George A. McGowan, Esquire, attorney for the appellant herein, it is hereby ordered that the time within which the record in the above-entitled cause may be docketed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, is hereby extended for a period of thirty (30) days from and after the date hereof.

Dated San Francisco, California, January 31st,
1917.

M. T. DOOLING,

United States District Judge.

The foregoing extension of time is hereby stipulated and agreed to by and between the counsel for the respective parties hereby.

JNO. W. PRESTON,

United States Attorney, Representing Respondent.

GEO. A. MCGOWAN,

Attorney for Petitioner.

[Endorsed]: Filed Jan. 31, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [30]

Certificate of Clerk U. S. District Court to Transcript on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing 30 pages, numbered from 1 to 30, inclusive, to contain a full, true, and correct transcript of certain records and proceedings, in the Matter of Mar Shee, on Habeas Corpus, No. 16,118, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with "Praeceptum for Transcript on Appeal" (copy of which is embodied in this transcript), and the instructions of the attorney for the detained and appellant herein.

I further certify that the cost for preparing and certifying the foregoing Transcript on Appeal is the sum of Fourteen Dollars and Eighty Cents (\$14.80), and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the Original Citation on Appeal, issued herein, page 32.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 13 day of February, A. D. 1917.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

(Citation on Appeal—Original.)

UNITED STATES OF AMERICA,—ss:

The President of the United States, to EDWARD WHITE, Commissioner of Immigration, Port of San Francisco, and to JOHN W. PRESTON, Esq., the U. S. Attorney, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, Division No. 1, wherein Mah Shee and Chan Leung are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 20th day of December, A. D. 1916.

M. T. DOOLING,

United States District Judge. [32]

[Endorsed]: No. 16,118. In the Southern Division of the United States District Court, for the Northern District of California, First Division. In re Mah Shee, Appellant, vs. Edward White, et al.,

Respondents. Citation on Appeal. Filed Dec. 21, 1916. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk.

Service of the within citation on appeal and receipt of a copy thereof is hereby admitted this 21st day of December, 1916.

JNO. W. PRESTON,
U. S. Attorney.

[Endorsed]: No. 2946. United States Circuit Court of Appeals for the Ninth Circuit. Mah Shee, by Chan Leung, Appellant, vs. Edward White, as Commissioner of Immigration at the Port of San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed March 1, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals,
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

**Certificate of Clerk U. S. District Court as to
Original Exhibits.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the accompanying exhibits, viz., Respondent's Exhibits "A" and "B" (Immigration Record) are original exhibits, intro-

duced and filed, in the matter of Mar Shee, on Habeas Corpus, No. 16,118, and are herewith transmitted to the U. S. Circuit Court of Appeals, for the Ninth Circuit, as per order of this Court, which is embodied in transcript on appeal herewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of February, A. D. 1917.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

CMT.

[Endorsed]: No. 16,118. U. S. District Court, Northern District of California, First Division. In the Matter of Mar Shee on Habeas Corpus. Certificate of Clerk, U. S. District Court, as to Original Exhibits.

No. 2946. United States Circuit Court of Appeals for the Ninth Circuit. Certificate of Clerk U. S. District Court to Original Exhibits. Filed Mar. 1, 1917. F. D. Monekton, Clerk.

